IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 26202 of 2007(T)

(I.A.NO.38/2007 IN OS.41/2003 of I ADDL.DISTRICT COURT, ERNAKULAM)

.....

PETITIONER:

K.P.PAILY, S/O.PAILY, AGED 67,
KUTTICHERAYIL HOUSE, MANNATHUR P.O.,
THIRUMARADY, ERNAKULAM DISTRICT.

BY ADV. SRI.K.C.ELDHO

RESPONDENTS:

----

1. **OUSEPH CHERIYAN, S/O.OUSEPH, AGED 56,**
   CHOORACKAL HOUSE, MANNATHU P.O., THIRUMARADY
   VILLAGE, PAMPAKUDA VIA. ERNAKULAM DISTRICT.
   PIN . 686 723.

2. **BINU THOMAS, S/O.THOMAS, AGED 25,**
   MEEKUZHICKAL HOUSE, MANNATHUR P.O,
   THIRUMARADY VILLAGE, PAMPAKUDA VIA,
   ERNAKULAM, PIN 686 723.

3. **DEACON GEE VARGHESE KOCHUPARAMBIL,**
   S/O.K.M.ALIAS, AGED 32, KOCHUPARAMBIL HOUSE,
   MANNATHOOR P.O., PAMPAKUDA VIA. ERNAKULAM
   DISTRICT.

4. **ST.GEORGE'S ORTHODOX SYRIAN CHURCH,**
   MANNATHUR, MANNATHUR P.O., THIRUMARADY
   VILLAGE, REP. BY ITS TRUSTEEE

5. FR.ELIAS JOHN, S/O.FR.M.C.JOHN, VICAR
ST.GEORGE ORTHODOX SYRIAN CHURCH, MANNATHUR,
MANNATHUR P.O., THIRUMARADI VILLAGE,
RESIDING AT MANNATHIKULAM, ONAKKOOR VILLAGE,
PAMPAKUDA (VIA) PIN. 686 723.

6. BABU JOHN, S/O.ULAHANNAN, AGED 37
PUTHUMPURATHU, MANNATHUR P.O.,
PIN 686 723.

7. V.M.KURIAKOSE, AGED 48, S/O.MANI,
VANNAPPURATH HOUSE, MANNATHUR P.O,
PIN. 686 723.

8. T.P.JOHN, KIZHAKKUMCHERIL, MANNATHUR.

9. SKARIA PAILY, KUNNUMMEL, MANNATHUR.

10. MATHAI T.V., THOLANIKUNNEL, MANNATHUR.

11. GEROGE PETER, KOCHUPARAMBIL,
MANNATHUR.

12. V.M.JOHN, VANAPPURATHU, MANNATHUR.

13. SIMMON MOOMUGALIL, MANNATHUR.

14. SHIBU KURIAN, VADACKEL,
DILAPPYRAM P.O

15. JOSE K.PRASAD, KOCHUPARAMBIL,
MANNATHUR.

16. BABU ABRAHAM, KANNAMTHORATHU,
MANNATHUR.

17. BABU ABRAHAM, MADUTHIKUDIYIL,
MANNATHUR.

18. BENNY PAILY, NEDUMTHADHIL,
MANNATHUR.

19. K.C.THANKACHAN, MARATHANAKUNNEL, MANNATHUR.

20. PHILIP SKARIA, VAZHAKKULAYIL, MANATHUR.

21. SABU A.I., ARITHADATHIL, MANNATHUR.

22. JOBY VARGHESE, PUTHEPURACKAL, MANNATHUR.

23. JOHNSON JOSEPH, CHERAKKALAKUDIYIL, MANNATHUR.

24. BINU KURIAKOSE, ARITHADATHIL, MANNATHUR.

25. SONIL V.J. VATTAPARAMBIL, MANATHUR.

26. K.M.MATHAI, KUDAPPILLIL, MANNATHUR.

27. JINTO KURIAN, MALAKUDIYIL, MANNATHUR.

28. K.C.ALIAS, MARUTHANAKUNNEL, MANATHUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

==========

W.P.(C) No.26202 OF 2007

==========

Dated this the 4th day of September 2007

JUDGMENT

This writ petition is preferred against the order of the I Addl.District Court, Ernakulam in I.A.No.38 of 2007 in O.S.No.41 of 2003. The interim application is filed to implead supplemental 3rd plaintiff and the court below after considering the matter held that the suit is filed under Order I Rule 8 C.P.C. and also the fact that the other plaintiffs are having no objection in impleading him as the 3rd plaintiff and therefore allowed the prayer for impleadment. Learned counsel for the petitioner would submit that the court had not considered the matter on merits and the person proposed to be impleaded is only a name lender and he is not a necessary party to the proceeding. In support of his contention he had relied on a decision of this court in ***KSEB T Union v. KSEBTU(INTUC)(1987(2) KLT 334)*** where this court held that a party can be impleaded when it is found that he is a necessary party and was omitted to be impleaded and further that when the question involved in the case cannot be effectively and completely adjudicated upon without the presence of that party. Learned counsel had

also drawn my attention to the decision of the Apex Court reported in ***Ruma Chakraborthy v. Sudha Rani Banerjee(2006(1) KLT SN Case No.2)*** wherein the court held that the court has no jurisdictional power to add a person as a party, who is neither a necessary party nor a proper party.

2. Now let me consider the affidavit filed in support of the application for impleadment. The first affidavit is filed by the 2nd plaintiff in the suit stating that the first plaintiff is a sick person and the 2nd plaintiff had obtained employment in Uttar Pradesh as a driver and therefore in order to have an effective and proper conduct of the case, the junction of the other parishners are necessary and therefore the 3rd petitioner may be impleaded as the 3rd plaintiff. The person proposed to be impleaded also has filed an affidavit to the effect that he is a parishner of the first defendant church, who is interested in the welfare and proper administration of the first defendant. He submits that his presence is necessary for a complete adjudication of the questions involved in the suit.

3. In the counter statement, it is submitted that the 2nd plaintiff is only working as a driver in a tipper lorry at Mannathoor and he is also an occasional bus driver. As laid down by the courts if one is satisfied that a junction of a party is necessary for resolving the controversy between the parties in a proper and cogent manner, certainly the application for

impleadment has to be allowed. At the stage of impleadment the court can only look into the wide parameters and cannot go intrinsically deep into the real question involved in the case, especially when a suit relates to a church where the interest of so many persons are involved and the plaintiffs approach the court with a contention that they are the parishners of the church and they want to protect and administer the church, I feel interest of justice requires that proper persons are in the party array for an effective adjudication of the case. By impleading the supplemental 3rd plaintiff no valuable right of the defendants is taken away and if they have anything to say against the impleaded 3rd plaintiff they can certainly place it before court in the form of an additional written statement and further if they are able to convince the court that the plaintiffs are having nothing to do with the administration of the church then the case filed by them will be thrown out. It is also a settled principle of law that the plaintiff is the master of the suit and when the plaintiff himself wants an additional plaintiff to be impleaded unless it causes so much of embarrassment, prejudice and a valuable right being taken away it should not be slightly discarded. I find that though not a detailed order is written by the District Judge he had borne in mind the basic principles and allowed the impleadment of the 3rd plaintiff.

Therefore I find no grounds to interfere with the said order. The writ

petition is therefore dismissed. Needless to say that the contesting defendants are at liberty to file additional written statement in support of their contentions.

M.N.KRISHNAN, JUDGE

Cdp/-